

GVM SECURITY AND PROTECTIVE AGENCY AND PHILIPPINE SCOUT VETERANS SECURITY & INVESTIGATION AGENCY, PETITIONERS, VS. NATIONAL LABOR RELATIONS COMMISSION AND ANTONIO DULCE, RESPOND...

G.R. No. 102157. July 23, 1993

Ponente: QUIASON, J.

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QUIASON, J.:

The issue in this petition for certiorari is whether a 64-year old employee, who voluntarily resigned, is entitled to retirement benefits under the Labor Code, in the absence of a company retirement plan or collective bargaining agreement or an established company policy on such benefits.

Private respondent was employed as a security guard by petitioners in July 1958. On February 6, 1987, after 28 years in the service of petitioners, he tendered his resignation, stating therein that “he is going back to the province to put up a little business and to get his cash deposit” (Rollo, p. 52). He was then 64 years old, and earning a monthly salary of P2,350.00. After petitioners paid him the amount of P6,650.00 as his “cash deposit,” he executed a quitclaim in their favor.

On May 5, 1988, private respondent filed a complaint against petitioners for monetary claims, including retirement pay. Petitioners denied any liability for the claims, taking the position that they did not have a company policy or collective bargaining agreement on employees' retirement benefits.

The Labor Arbiter dismissed private respondent's complaint on “lack of sufficient supporting evidence to establish [his] claims.” He, however, stated that “considering private respondent's twenty-eight years of service x x x he may be granted any ex-gratia benefits, or any benefit pursuant to the company policy” (Rollo, p. 42).

On appeal, the NLRC, in its Resolution dated December 28, 1990, held petitioners liable for the amount of P3,915.00 as differential to private respondent's separation pay and P391.50 as attorney's fees. The NLRC arrived at the amount by applying the formula found in paragraph (a), Section 14, Rule I, Book VI of the Omnibus Rules, specifically the provision granting a separation pay equivalent to one-half month salary for every year of service and considering a fraction of at least six months as one whole year.

Both parties moved for reconsideration of the resolution. Private respondent questioned the mathematical computation of the differential, claiming that he was entitled to P27,325.00 as differential and P2,732.00 as attorney's fees. Petitioners assailed the legal basis for the grant of retirement pay.

Acting on the motions for reconsideration, the NLRC, in its Resolution dated August 23, 1991, ordered petitioners to pay private respondent the amount of P27,325.00 as “differential of his retirement benefits and P2,742.50 as attorney's fees” (Rollo, p. 22).

Hence, the instant petition for certiorari.

On November 4, 1991, this Court issued a temporary restraining order enjoining the NLRC from implementing the assailed resolutions.

The issue involved in the instant case was settled in *Llora Motors, Inc. v. Drilon*, 179 SCRA 175, [1989] wherein we held that under Article 287 of the Labor Code, entitlement of employees to retirement benefits must be specifically granted under existing laws, a collective bargaining agreement or employment contract or an established employer policy. *Llora Motor, Inc. was reiterated in Abaquin Security and Detective Agency, Inc. v. Atienza*, 190 SCRA 460 [1990].

Article 287 of the Labor Code reads as follows:

“Article 287. Retirement. - Any employee may be retired upon reaching the retirement age established in the collective bargaining agreement or other applicable employment contract.

In case of retirement, the employee shall be entitled to receive such retirement benefits as he may have earned under existing laws and any collective bargaining agreement and other agreements.”

The first paragraph of Article 287 deals with the retirement age of an employee, which is the age established in (a) a collective bargaining agreement or (b) other applicable retirement contract.

The second paragraph of said Article deals with the retirement benefits to be received by a retiring employee and which are the retirement benefits as the employee may have earned under (a) an existing law, (b) a collective bargaining or (c) other agreements.

As stressed in *Llora Motors, Inc.*, Article 287 does not in itself purport to impose any obligation upon employers to set up a retirement scheme for their employees over and above that already established under existing laws, like the Social Security Act.

There are three kinds of retirement schemes. The first type is compulsory and contributory in character. The second type is one set up by agreement between the employer and the employees in collective bargaining agreements or other agreements between them (*Llora Motors, Inc. v. Drilon*, supra). The third type is one that is voluntarily given by the employer, expressly as in an announced company policy or impliedly as in a failure to contest the employee’s claim for retirement benefits (*Allied Investigation Bureau, Inc. v. Ople*, 91 SCRA 265 [1979]).

Respondent is not asking for retirement benefits due him under the Social Security Law. He does not claim that there is a collective bargaining agreement or other applicable contract or an established company policy, granting him retirement benefits.

The asymmetry in the law in granting separation pay to employees who have served the company for at least one year but denying retirement benefits to those who have reached retirement age in the absence of agreements granting the same, is for the legislature to remedy.

WHEREFORE, the instant petition is GRANTED. The assailed Resolutions of the NLRC dated August 23, 1991 and December 28, 1990 are SET ASIDE, and the Temporary Restraining Order issued by the Court on November 4, 1991 is made PERMANENT.

SO ORDERED.

Cruz, (Chairman), Griño-Aquino, Davide, Jr., and Bellosillo, JJ., concur.

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